

**MARKET CONDUCT EXAMINATION REPORT**  
**AS OF DECEMBER 31, 2002**

**Continental Casualty Company**  
**333 S. Wabash**  
**Chicago, IL 60685**

**NAIC Group Code: 218**  
**NAIC Company Code: 20443**  
**Colorado Company No.: 899**

**EXAMINATION PERFORMED**  
**for the**  
**STATE OF COLORADO**  
**DEPARTMENT OF REGULATORY AGENCIES**  
**DIVISION OF INSURANCE**

**Continental Casualty Company  
333 S. Wabash  
Chicago, IL 60685**

**MARKET CONDUCT  
EXAMINATION REPORT  
as of  
December 31, 2002**

**Examination Performed by**

**Stephen E. King, CIE  
Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS**

**Independent Market Conduct Examiners**

February 26, 2004

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner:

A market conduct examination of the Continental Casualty Company was conducted in accordance with and pursuant to §§10-1-203 and 10-3-1106, Colorado Revised Statutes. This examination focused on the Company's long-term care insurance business, involving a review of underwriting, rating, policyholder service, marketing, sales and claims practices. The Company's records were examined at their offices located at 333 S. Wabash, Chicago, IL 60685.

The time period covered by the examination was from January 1, 2002 through December 31, 2002.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
CONTINENTAL CASUALTY COMPANY**

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## **COMPANY PROFILE**

Continental Casualty Company (“CCC” or the “Company”) was incorporated in 1897 and is a subsidiary of CNA Financial, a holding company. CCC is a stock company, domiciled in Illinois and is responsible for conducting property and casualty insurance operations for the CNA companies, in addition to conducting some group health operations. In 1965, the Company became one of the first insurance companies to offer a form of long-term care insurance protection.

The Company was licensed and began operations in Colorado on March 1, 1977, and is authorized to write the following lines of business: accident & health; accident & health credit; casualty credit; crop; fidelity & surety; general casualty; general property; mortgage guaranty; motor vehicle – casualty; motor vehicle – property; professional malpractice; and workers’ compensation.

## **COMPANY OPERATIONS AND MANAGEMENT**

The Company is licensed and does business in all fifty (50) states, in addition to the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

The Company generates business through the American Independent Agency System where Company operations are segmented into Business Units, consisting of related sets of products and services.

The Company’s group benefit sales area has extensive knowledge in the following group benefit product lines: life, AD&D, short & long term disability, long-term care and specialty medical. The Company accesses the group benefits marketplace primarily through agents, brokers and employee benefit consultants.

Effective October 2003, the Company discontinued accepting applications for individual long-term care insurance policies.

For the year 2002, the Company reported \$6,078,000 in direct written premium for its individual and group long-term care insurance business, which represents a 6.70% market share of the long-term care insurance business in Colorado.

**PURPOSE AND SCOPE OF EXAMINATION**

Independent Examiners, contracting with the Colorado Division of Insurance (DOI), in accordance with Colorado Insurance Law, §§ 10-1-201, 10-1-203 and 10-1-204.C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations for the purpose of auditing business practices of insurers, reviewed certain business practices of Continental Casualty Company. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and generally accepted operating principles related to long-term care insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. Examiners have relied primarily on records and materials maintained by the Company. The market conduct examination covered the period from January 1, 2002, through December 31, 2002.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Producers
- Underwriting - Forms / Policyholder Services
- Underwriting - Rating
- Underwriting - Applications
- Underwriting - Cancellations
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the examination, Examiners provided the Company with Examination Memorandums and Comment Forms to obtain information, ask questions and/or address noted discrepancies. When either form is issued by Examiners, the Company is required to provide a detailed response. Generally, only the Comment Form will cite a specific statute or regulation when a non-compliant situation is identified.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When utilizing a sampling technique to select a sample file population to review, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or as a result of the file selection process, it was not possible to determine an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample population was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division of Insurance. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. Failure to identify specific Company practices, however, does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any life insurance company or product.

**EXAMINERS' METHODOLOGY**

In accordance with §10-1-203, Colorado Revised Statutes, examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to long-term care insurance companies, as shown in the following exhibit.

**Exhibit 1**

<b>Law/Regulation</b>	<b>Concerning</b>
Section 10-1-108	Duties of Commissioner – reports – publications – fees – disposition of funds - adoption of rules.
Section 10-1-109	Rules and regulations of commissioner
Section 10-1-111	Grounds and procedure for suspension or revocation of certificate or license of entities.
Section 10-1-127(6)(a)	Anti-fraud Plan
Sections 10-2-1001 to 10-2-1101	Managing General Agent Act
Section 10-2-103	Licenses - General Provisions - Definitions
Sections 10-2-401 to 10-2-417	Licenses – Licensing and Appointment of Insurance Producers
Sections 10-2-701 to 10-2-704	Licenses – Business Conduct of Licensees
Section 10-3-105	Certificate of Authority
Section 10-3-109	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.
Sections 10-3-1101 to 10-3-1104	Unfair Competition – Deceptive Practices
Sections 10-19-101 to 10-19-115	Long –term Care Insurance Act
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 1-2-9	Fees Charged by Agents/Brokers
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 4-4-1	Concerning Requirements for Long-term Care Insurance
Regulation 4-4-2	Implementation of Basic and Standard Long-term Care Insurance Plans
Regulation 4-4-3	Suitability Standards for Long-term Care Insurance Products



**Company Operations / Management**

Examiners verified the Certificate of Authority and reviewed Company management and administrative controls and record retention practices. Additionally, the Company's cooperation during the course of the examination was noted.

**Marketing and Sales**

Examiners reviewed all of the Company's marketing and sales material used in the State of Colorado during the examination period. These materials were reviewed to verify compliance with the Colorado regulations and to determine if the Company accurately represented their products. The total population of 102 marketing and sales pieces was reviewed.

**Producers**

Examiners reviewed 100% of the Company's producer listing, to ensure those who received commissions or a percentage of premiums were properly licensed.

**Underwriting – Forms / Policyholder Services**

Examiners reviewed all forms provided by the Company during the course of the examination, to determine compliance with Colorado insurance laws.

**Underwriting - Rating**

Examiners randomly selected a sample population of fifty (50) individual new business files from a population of 746 files. In addition, from the two (2) group policies situated in Colorado, Examiners randomly selected a sample population of fifty (50) Colorado certificate-holders, from a population of 162. These files were reviewed to ensure proper handling and verify that Company filed rates were properly applied.

**Underwriting – Cancellations / Declinations**

Examiners randomly selected a sample population of fifty (50) cancelled files, from a population of 128. Examiners reviewed these files to ensure accurate and timely processing of the premium refund, when applicable. In addition, Examiners randomly selected a sample population of fifty (50) declined files, from a population of 155. Examiners reviewed these files to ensure fair and consistent underwriting practices and accurate and timely processing of the premium refund.

**Claims**

Examiners reviewed all paid individual claims (twenty-seven (27)) and all paid group claims (four (4)). In addition, the Company provided Examiners with four (4) individual claims that were closed without payment and one (1) file in which coverage was rescinded. File activity, regarding the five (5) referenced files, was outside the examination period and will not be a part of this report. Examiners reviewed the Company's claims handling guidelines and claim information, to determine timeliness of processing and accuracy of payment.

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**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of six (6) findings in which the Company did not appear to be in compliance with Colorado insurance law. The following summarizes Examiner findings.

**Company Operations / Management:** Examiners found three (3) areas of concern in their review of Company Operations / Management. Examiners identified the following issues:

- Failing to file a complete annual report of all policy forms in use.
- Failing, in some cases, to maintain records required for market conduct purposes.
- Failing to establish auditable marketing procedures to assure that any comparison of policies by its producers will be fair and accurate.

**Marketing and Sales:** In the area of Marketing and Sales, no compliance issues or concerns were identified and thus are not addressed in this report.

**Producers:** Examiners found one (1) area of concern in their review of Producers. Examiners identified the following issue:

- Paying a service fee or other valuable consideration to entities that solicited insurance without being duly licensed.

**Underwriting – Forms / Policyholder Services:** Examiners found two (2) areas of concern in their review of forms. Examiners identified the following issues:

- Failing, in some cases, to define “Mental or Nervous Disorder” as required by Colorado insurance law.
- Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance law.

**Underwriting – Rating:** In the area of Rating, no compliance issues or concerns were identified and thus are not addressed in this report.

**Underwriting – Cancellations:** In the area of Cancellation refunds, no compliance issues or concerns were identified and thus are not addressed in this report.

**Claims:** In the area of Claims, no compliance issues or concerns were identified and thus are not addressed in this report.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**CONTINENTAL CASUALTY COMPANY**

**COMPANY OPERATIONS AND MANAGEMENT  
FINDINGS**

<b>Issue A1: Failing to file a complete annual report of all policy forms in use.</b>
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10-16-107.2. Filing of health policies, states in part:

- (1) All sickness and accident insurers, health maintenance organizations, and nonprofit hospital and health service corporations authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy form, endorsement, or rider for any sickness, accident, nonprofit hospital and health service corporation, health maintenance organization, or other health insurance policy, contract, certificate, or other evidence of coverage issued or delivered to any policyholder, certificate holder, enrollee, subscriber, or member in Colorado. Such listing shall be submitted by January 15, 1993, and not later than December 31 of each subsequent year and shall contain a certification by an officer of the organization that each policy form, endorsement, or rider in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

Colorado Regulation 1-1-6, Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act", which is promulgated pursuant to §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S. , states in part:

Section 3. Applicability and Scope

This regulation applies to all insurers and other entities authorized to conduct business in Colorado which provide health coverages...

Section 5. Rules

C. Not later than December 31 of each year, each entity providing health care coverages shall file an Annual Report of policy forms including a fully executed certificate of compliance...

Colorado Regulation 4-4-1 Concerning Requirements for Long-term care insurance, promulgated under the authority of §10-1-109(1), 10-3-110(1) and 10-19-113.7, C.R.S., requires in part:

XIII. FILING REQUIREMENT

...In all other instances, insurers, non-profits and health maintenance organizations are required to comply with the appropriate Colorado Insurance Laws and Regulations concerning the filing of forms and rates.

The Company's 2002 annual forms report, concerning Group long-term care was filed with the Colorado Division of Insurance on February 20, 2003. The last annual report relating to Individual long-term care forms was submitted by the Company on April 23, 2001. The Company did not submit an Individual long-term care annual forms report in 2002. Therefore, it appears that the Company failed to comply with the requirement to file an annual report of all policy forms in use in Colorado for the 2002 reporting period.

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**Recommendation No. 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-16-107.2 and Regulations 1-1-6 and 4-4-1. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure future compliance with Colorado insurance law.

<b>Issue A2: Failing, in some cases, to maintain records required for market conduct purposes.</b>
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Colorado Repealed and Repromulgated (In Full) Regulation 1-1-7, Market Conduct Record Retention, states in part:

Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint / grievance handling, *producer licensing records* [emphasis added], and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years...

Section 7. Licensing Records

Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer.

Licensing records shall be maintained so as to show clearly the status of the producer at the time the application was taken as well as the dates of the appointment and termination of each producer...

The Company was unable to provide documentation substantiating that producers whose licenses renewed on after January 1, 1998, had obtained the required long-term care certification. Without such documentation, the Company is unable to verify that producers were appropriately licensed at the time they accepted applications on behalf of the Company.

Based on the aforementioned, it appears that the Company failed to maintain records in accordance with Regulation 1-1-7.

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**Recommendation No. 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-7. In the event the Company is unable to show such proof; it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure future compliance with Colorado insurance law.

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<b>Issue A3: Failing to establish auditable marketing procedures to ensure that any comparison of policies by its producers will be fair and accurate.</b>
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Colorado Regulation 4-4-1 Concerning Requirements for Long Term Care Insurance, promulgated under the authority of §§10-1-109(1), 10-3-110(1) and 10-19-113.7 C.R.S. requires in part

**XVI. STANDARDS FOR MARKETING**

- A. Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:
  - 1. Establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate...
  - 5. Every insurer or entity marketing long-term care insurance shall establish *auditable procedures* [emphasis added] for verifying compliance with the Subsection A.

The Company's advertising policies and procedures (CNA Bulletin 7678) indicates that all advertisements for CNA products and programs that are created by someone other than CNA's Marketing Dept., *with the exception of consumer websites*, [emphasis added] must be approved in writing by the Advertising Department.

In regard to consumer websites generated by the Company's producers or marketing partners, it does not appear that the Company has auditable procedures for verifying that any comparison of policies by its producers will be/are fair and accurate.

Based on the preceding information, it appears that the Company is not in compliance with the requirements of Regulation 4-4-1(XVI)(A)(5).

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**Recommendation No. 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-4-1. In the event the Company is unable to show such proof; it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure future compliance with Colorado insurance law.



<p><b><u>PRODUCER FINDINGS</u></b></p>
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<b>Issue D1: Paying a service fee or other valuable consideration to entities that solicited insurance without being duly licensed.</b>
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Section 10-2-702 C.R.S. Commissions, states in part:

- (1) No insurer or insurance producer shall pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting or negotiating insurance within this state unless, at the time such services were performed, such person was a duly licensed insurance producer under this article for the performance of such services...

Upon review of the Company's 2002 commissions listing, forty-six (46) individuals and agencies were found to have been paid commissions, but did not possess a Colorado license. These individuals and agencies did not possess a Colorado license at the time payment was made by the Company or at any other time.

Of the above forty-six (46) individuals/entities, ten (10) individuals were designated as LSRs (Life Sales Representative) by the Company. The LSR designation indicates that the individuals were employees, yet were also agents, working in the Company's Life Sales Offices. The LSR's main responsibilities are to teach and assist agents in selling CNA products. LSRs are paid a percentage of the premium amount for any insurance sale in which they assisted. Additionally, nine (9) entities were designated as SGAs (Supervising General Agent), indicating that they were conducting business in multiple states, with multiple agents. The SGAs received a percentage of premiums generated by each agent (an override), for supervising those agents.

Because compensation provided to LSRs and SGAs is based strictly on a percentage of premiums, it appears that neither would be exempt from licensing under §10-2-105, C.R.S., Insurance producer - exemption from definition.

Based on the preceding information, it appears that during the examination period, the Company was not in compliance with the requirements of §10-2-702(1) C.R.S. Commissions, as referenced above, in that the Company paid commissions, *service fees, or other valuable consideration* [emphasis added] to unlicensed agents/agencies listed.

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**Recommendation No. 4:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation §10-2-702 C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure future compliance with Colorado insurance law.

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**UNDERWRITING – FORMS / POLICYHOLDER SERVICES**  
**FINDINGS**

<b>Issue E1: Failing, in some cases, to define “Mental or Nervous Disorder” as required by Colorado insurance law.</b>
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Colorado Amended Regulation 4-4-1, Concerning Requirements for Long Term Care Insurance, states in part:

**V. POLICY DEFINITIONS**

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

- K. "Mental or nervous disorder" shall be defined to include no more than the neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

Regarding the policies listed below, in the General Benefit Information section, under the provision Coverage for Alzheimer’s Disease, the Company utilizes the terms “Nervous or Mental Disorders”. However, the policies do not include a definition of the terms “Mental or Nervous Disorder”, as required by the above referenced regulation.

- |                  |                 |                  |
|------------------|-----------------|------------------|
| 1. P1-N0022-A    | 2. P1-N0023-A   | 3. P1- N0026-A   |
| 4. P1-N0027-A    | 5. P1-N0030-A   | 6. P1- N0031-A   |
| 7. P1-N0014-A05  | 8. P1-N0015-A05 | 9. P1- N0039-A05 |
| 10. P1-N0040-A05 |                 |                  |

It appears that by not defining the terms “Mental or Nervous Disorder” in the Company’s policy forms, the forms are non-compliant with the requirements of Colorado insurance law.

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**Recommendation No. 5:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-4-1. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has revised all affected forms to include the required definition of “mental or nervous disorder” to ensure compliance with Colorado insurance law.

<b>Issue E2: Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance law.</b>
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Section 10-1-127(7)(a) C.R.S., Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states:

On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.”

The following fraud warning language is included in the Company’s group application form ZG-119896-A (Short Form) and ZG-129106-A (Long Form). “NOTICE: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.” The Master Application For Group Long Term Care (SPV1AA) contains no fraud warning language.

Based on the preceding information, it appears that the fraud warning language being used by the Company is not substantially the same as the aforementioned language and thus, is not in compliance with the requirements of §10-1-127, C.R.S.

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**Recommendation No. 6:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-1-127, C.R.S. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has revised the fraud warning language on all forms requiring such warning to ensure compliance with Colorado insurance law.

**SUMMARY OF ISSUES AND RECOMMENDATIONS**

<b>ISSUES</b>	<b>Rec. No.</b>	<b>Page No.</b>
<b>COMPANY OPERATIONS AND MANAGEMENT</b>		
Failing to file a complete annual report of all policy forms in use.	1	14
Failing, in some cases, to maintain records required for market conduct purposes.	2	15
Failing, to establish auditable marketing procedures to assure that any comparison of policies by its producers will be fair and accurate.	3	16
<b>PRODUCERS</b>		
Paying a service fee or other valuable consideration to entities that solicited insurance without being duly licensed.	4	18
<b>UNDERWRITING – FORMS / POLICYHOLDER SERVICES</b>		
Failing, in some cases, to define “Mental or Nervous Disorder” as required by Colorado insurance law.	5	20
Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance law.	6	21

**Independent Market Conduct Examiners**

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